



IAALS Comment RE: the California Paraprofessional Program Proposal

We write on behalf of IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, in response to The California State Bar call for public comment on the Paraprofessional Program proposal. Thank you for considering our feedback, and we congratulate the California Paraprofessional Program Working Group (hereinafter CPPWG or Working Group) for its thorough work on this issue.

The California (and Nation-Wide) Problem

Many people in the United States — including those in California — do not have access to the legal advice or legal assistance they need to address their legal problems. Studies confirming this fact are legion and come from a variety of well-established organizations and experts. The [California Justice Gap Study](#), for example, found that 55% of Californians at all income levels experienced at least one civil legal problem in their household, yet nearly 70% of them received no legal assistance. Of course, the Working Group members authoring the dissent in the Final Report and Recommendations point out that we cannot conflate the absence of legal help with the justice gap. Some people don't know they have a legal matter; some proactively decide not to proceed with legal help. And further, with respect to the 33% of respondents who made no attempt to seek legal help, we do not have data on the percentage who made an attempt to seek legal help and were not able to do so.

The dissenting members are not wrong to highlight the limitations of this available data. However, it must be noted that the study “did not allow for an analysis of the service gap for Californians overall,” so the data does not paint the full picture. Access to affordable legal services is not a problem relegated only to the poor. Indeed, a new report from the Institute for the Advancement of the American Legal System's and the Hague Institute for Innovation of Law's joint [US Justice Needs](#) project provides data that shows access to justice is a problem that is impacting people from all walks of life, with serious social, legal, economic and political consequences. Additionally, other data paint a more compelling picture of the need for more accessible legal services.

The April 2019 Judicial Council of California Benchguide, *Handling Cases Involving Self-Represented Litigants*, recognizes the reality that “[t]he caseload of most California judges now consists primarily of cases in which at least one party is self-represented.” This is consistent with national data finding that approximately three out of four civil and family cases involve at least one self-represented party. While we cannot ascertain whether these parties are proceeding unrepresented due to necessity or choice (or some combination thereof), IAALS’ qualitative research into the experience of self-represented litigants in family law cases shows that overwhelmingly these parties want legal help on some level. Our research also confirms that these unrepresented parties are open to receiving legal help from authorized and trained professionals who are not attorneys.

A Solution Worth Exploring

In September 2021, after considerable inquiry, the California Paraprofessional Program Working Group submitted its [final report](#) that includes the recommended scope of services, licensing requirements, and discipline system. These recommendations offer a new way forward for access to legal services, and the State Bar should approve them for the following reasons.

Licensing Requirements

The CPPWG recommendations take pains to ensure licensure is setting standards for competency. To be eligible for licensure, paraprofessionals must first have a JD or LLM, be a qualified paralegal, or be a qualified legal document assistant. They must then take subject matter-specific classes, ethics and professional responsibility classes, as well as classes in pretrial and court procedure and court advocacy. Paraprofessionals must also complete 1,000 hours of practical training over six or more months, with 500 hours of that training in the practice area they will be licensed. Lastly, in addition to a moral character determination, the paraprofessional must complete subject matter-specific testing and a professional responsibility exam that is modeled after the lawyers’ exam.

It should be noted that the CPPWG recommendations vary significantly from Washington’s Limited License Legal Technicians (LLLT) program, which was recently sunset in part due to the small number of interested individuals. The LLLT program was limited to family law cases, hindering the number of interested individuals, whereas California’s program includes family, consumer debt, landlord/tenant, employment/income, and collateral criminal cases. Additionally, the education requirements for the LLLT program were unnecessarily extensive by requiring 45 credit units of instruction (over 330 hours),

1,500 hours of law-related work experience, and three separate examinations. California's program, on the other hand, requires only 13 general credit units with additional credit units based on the desired practice area (e.g., family law requires an additional 13 units). California's program also lessens the practical training to 1,000 hours and limits the testing to subject matter-specific testing and a professional responsibility exam. While these requirements are significantly lower than the LLLT program, which will likely increase the number of interested individuals, they are still robust enough to provide protection to the public.

Baseless Assertion of Harm to Consumers vs. the CPPWG Discipline System

One of the most voiced concerns about the creation of paraprofessionals is that they will provide second-rate services that could pose a greater risk to consumers. While many lawyers who oppose paraprofessional programs imagine all the harm that could come with new legal services providers, they somehow cannot fathom the idea that regulators could set ethical and competency standards and regulations to minimize risk (just as we do with lawyers). In Canada, the Law Society of Ontario has been regulating independent paralegals since 2012. There are now around 10,000 independent paralegals in Ontario, with their own professional rules of conduct and licensing requirements. According to the Law Society of Ontario's former strategic policy counsel, Will Morrison, about the same percentage of paralegals and lawyers are the subject of a complaint in any given year.

When it comes to consumer protection, discipline is often paired with licensing. For lawyers in California, potential clients can look on the State Bar's website and look up a lawyer's discipline history. While this does not determine whether a client will have a negative experience with that lawyer, it can put the client at ease knowing that there have been no major disciplinary issues to date. The CPPWG has recommended a similar system for paraprofessionals by taking from the models of the attorney discipline system and the discipline system for professional licensing boards under the jurisdiction of the California Department of Consumer Affairs. Aside from warning letters, which are not considered discipline, all other disciplinary actions taken by the Office of Chief Trial Counsel will be made public. These type of disciplinary systems exist in other programs where nonlawyers can represent clients; as sociologist and MacArthur Genius Rebecca Sandefur's [research indicates](#), both the quality of outcomes and numbers of complaints are as good as or better than with lawyers.

Scope of Services

The CPPWG expanded the eligible practice areas by including collateral criminal; consumer debt; employment and income maintenance; family, children, and custody; and housing — all areas which, as the CPPWG knows, are currently vastly underserved by lawyers now. Additionally, the CPPWG has recommended that paraprofessionals be allowed to represent their clients in court.

The variety of service areas and allowance of in-court representation will provide a great benefit to many who cannot afford full-service lawyers. Consumer debt, housing, and family law have some of the highest percentages of self-representation and the outcomes of these cases can negatively affect people for the rest of their lives. With the creation of these paraprofessionals, litigants will have more options than ever to find someone who can help them navigate their case — all the way to the courtroom — at an affordable cost.

Pro Bono and Contingency Fees Do Not and Cannot Solve the Problem

A typical rejoinder to this crisis from some lawyers is to call for more pro bono work or more funding for legal aid. Unfortunately, the sheer scale of the problem far exceeds the ability for these to suffice. For example, using numbers from 2016, economist and law professor Gillian Hadfield estimated that it would cost upwards of \$46 billion to provide just one hour of legal help to all the households in the United States currently facing legal problems. Alternatively, if every single one of the 1.3 million lawyers licensed in the United States were to take on all these problems, they would each have to put in 180 pro bono hours. Compare this number to the current average amount of pro bono hours lawyers provide, which is around 55, and that is only among the 52% who provided such services.

Other lawyers suggest that the contingency-fee model provides enough access as is, and that reforms might disrupt that arrangement to the detriment of people in need. The contingency-fee model provides some degree of access to people in case types such as personal injury and workers' compensation; however, it cannot sustainably address the current needs of the vast majority of people in California who are caught up in legal disputes because self-representation-heavy case types such as family, consumer debt, and landlord/tenant are outside the bounds of contingency fee arrangements. The National Center for State Courts' 2015 [*Landscape of Civil Litigation*](#) study suggests that most cases in state courts (64%) are contracts cases, driven by debt collection and landlord/tenant cases. Additionally, The Cady

Initiative’s 2018 report, [The Landscape of Domestic Relations Cases in State Courts](#), which gathered data from 11 large, urban counties, including Los Angeles, noted that 72% of divorce and separation cases involved at least one self-represented party. For these reasons, the CPPWG has made family, consumer debt, and landlord/tenant cases as primary case types that paraprofessionals can work on. All that being said, it must be stated that none of the reforms being considered in California contemplate eliminating the use of contingency fees or the contingency-fee model.

False Assertion that Everyone Wants a Lawyer’s Help

Many lawyers claim that people going through the legal system want nothing less than help from a licensed lawyer. IAALS’ [Cases Without Counsel](#) research study involved an interview protocol that included a line of inquiry designed to assess whether study participants might have been receptive to receiving assistance from an authorized non-attorney professional. The response in favor was overwhelming.

“It’s better to have someone that at least has some working knowledge of the system,” said one individual, rather “than trying to navigate it alone when you know nothing.” Another remarked, “When you’re going through it, honestly, at that point, anybody—whether they’re a lawyer or not—if they’re qualified to give you that advice, you would appreciate it.”

To back up this point further, [research from Rebecca Sandefur](#) indicates that consumers are already using nonlawyer providers, and that, when people are experiencing civil justice problems, they often look for legal advice rather than the assistance of lawyers. “In an analysis of live chat streams from two different legal aid websites . . . researchers found that visitors sought legal advice—an analysis of their legal situation and suggestions about how to handle it—about two-fifths of the time. . . . People visiting legal information websites and asking questions through live chat were far less often seeking the services of lawyers.”

Conclusion

The access to justice crisis in California, and throughout the United States, is both real and large. It spans across multiple economic classes and it has a debilitating effect on those with legal issues. It is clear that legal aid, self-help, and pro bono work are not enough and that a new model is imminently

necessary. The CPPWG’s recommendations on the creation of paraprofessionals are an important step forward to closing the justice gap. These paraprofessionals will be able to help their clients in areas of law that will have monumental impact, including family law, debt collection, and housing issues — without coming at the cost of lawyers or the public. They will be well educated and trained in the specific areas of law they work in, with a disciplinary system to weed out bad apples every industry deals with. To fulfill its mission to support efforts for greater access to, and inclusion in, the legal system, the State Bar of California Board of Trustees should approve the CPPWG’s recommendations.

Michael Houlberg
Manager

Natalie Knowlton
Director of Special Projects

Zachariah J. DeMeola
Director of Legal Education and the Legal Profession